

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-003-13-1-5-00236-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-13-483-019.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 assessment of his property located at 4732 W. 29<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the vacant residential lot at \$2,200 for 2013.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 6, 2019, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. Hearing Officers Robert Metz and Joseph E. James represented the Assessor. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2014-2018
Petitioner Exhibit B:	Property record card for 2010-2015
Petitioner Exhibit C:	GIS map of the subject parcel <sup>1</sup>
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

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<sup>1</sup> The Assessor offered no exhibits.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. The property's value remained unchanged from 2012 to 2013. Nowacki therefore bears the burden of proof.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. This property only has a -20% influence factor because it is on a road. The parcel under appeal in a previous hearing, 4733 W. 28<sup>th</sup> Avenue, has a -50% influence factor applied because it is not on a road. The value of the properties should be the same because they are both in the same subdivision with no development, no market interest, and both lots are unbuildable. *Nowacki testimony; Pet'r Exs. A-C.*
  - b. The value of this property decreased from \$3,600 to \$1,900, whereas the value of 4733 W. 28<sup>th</sup> Avenue decreased from \$3,600 to \$1,200. These are very similar lots. The idea that the one on the road has more value from the standpoint of the market is incorrect. Nowacki contends a reasonable assessed valuation for the property is \$900. *Nowacki testimony; Pet'r Exs. A, B.*
  - c. The characteristics on the property record cards for this parcel and for 4733 W. 28<sup>th</sup> Avenue are also the same. Both cards show the properties are on paved roads when clearly one of them is not. The characteristics should not be a one-size-fits-all with no variation because all properties are unique. *Nowacki testimony; Pet'r Exs. A, B.*
  - d. The neighborhood life cycle is categorized as static on the property record card. Nowacki agrees it is static in that it is depressed and blighted. It is also static in that there is no improved market value and static to the degree that it is over-assessed. *Nowacki testimony; Pet'r Exs. A, B.*
9. The Assessor's case:
  - a. The Assessor contends the characteristics on the property record card are for neighborhood 2554 in taxing district 003, and are not specific to an individual parcel. *James testimony; Metz testimony.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* March 1<sup>st</sup> 2013, was the legal assessment date for this appeal. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the property's 2013 assessment should be \$900, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Nowacki contentions regarding the property's characteristics fair no better because he failed to show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the Assessor's methodology is insufficient to make a prima facie case of an error in the assessment. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
  - e. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial

evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 assessment.

ISSUED: July 30, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.